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In re Application of	:	
MATE, et al.	:	DECISION ON PETITION
U.S. Application No.: 10/030,207	:	
PCT No.: PCT/IB00/00962	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 03 July 2000	:	
Priority Date: 02 July 1999	:	
Attorney Docket No.: NOK-I14-00015	:	
For: METHOD AND SYSTEM FOR DATA	:	
RECEPTION ACKNOWLEDGMENT	:	

This decision is in response to applicant's "Petition Pursuant to 37 C.F.R. 1.47(a)" filed 30 September 2002 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 03 July 2000, applicants filed international application PCT/IB00/00962, which claimed priority of an earlier application filed 02 July 1999. A copy of the International Application was forwarded to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 11 January 2001. A Demand for international preliminary examination, in which the United States was elected, was filed on 01 February 2001, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 02 January 2002.

On 31 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a First Preliminary Amendment and an Information Disclosure Statement.

On 22 March 2002, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International Application number and international filing date. Applicant was further advised of the need to provide payment of the surcharge for providing an executed oath or declaration of the inventors later than thirty months from the priority date. Applicant was afforded two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 30 September 2002, applicant filed the present petition accompanied by a petition for a four month extension of time and payment of the appropriate extension fee. With the filing of the petition and payment of the extension fee, the response is considered timely filed.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to Item (1), applicants have provided payment of the petition fee.

Regarding Item (3), applicants have provided the last known address of the non-signing inventor, Amit MATE.

As to Item (4), accompanying the petition is a declaration signed by the remaining inventor on his behalf, and on behalf of the non-signing inventor. Accordingly, Items (1), (3) and (4) have been satisfied.

As to item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (MPEP) states, in part:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47. Such a petition will be dismissed as inappropriate.

The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

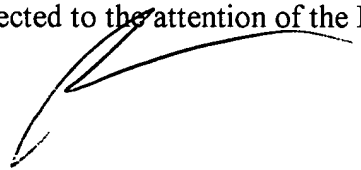
Applicants appear to be alleging that co-inventor MATE cannot be found or located. However, no documentary evidence to support the failed attempts was provided with counsel's declaration; such as a returned envelope or tracking report. In addition, it does not appear that counsel has firsthand knowledge of the attempt to present the non-signing inventor with the application papers. Lastly, applicants have not provided any information as to whether a search of telephone directories or Internet search engines were performed in an attempt to find a current address for Mr. MATE.

CONCLUSION


Applicants' petition under 37 CFR 1.47(a) is **DISMISSED, without prejudice.**

Applicants are hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file either 1) an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) signed by all inventors or 2) a renewed petition satisfying all requirements under 37 CFR 1.47(a). Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.



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